

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to health care employment agencies

The Inspections and Appeals Department hereby adopts new Chapter 55, “Health Care Employment Agencies,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 10A.104 and 2022 Iowa Acts, House File 2521.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 2521.

Purpose and Summary

The adoption of Chapter 55 implements 2022 Iowa Acts, House File 2521. The legislation defines “health care employment agency” and requires a health care employment agency operating in the state to register with the Department. The legislation requires a health care employment agency to maintain liability insurance, verify and document that its agency workers meet minimum standards for their profession, and submit quarterly data regarding the average amount the agency charges and the average amount paid to agency workers. The legislation also proscribes the restriction of employment opportunities of agency workers by noncompetition clauses and provides penalties for failure to adhere to this requirement.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 5, 2022, as **ARC 6571C**.

The first comment, submitted on behalf of Jackson Healthcare, noted concern that the rules failed to exclude physician assistants from the definition of “direct services,” resulting in subjecting physician assistants to the same requirements as “health care employment agency workers” when similar professionals, such as advanced registered nurse practitioners and physicians, are specifically excluded. The commenter noted that the independence and scope of practice of physician assistants distinguishes them from the categories of workers providing “direct services” pursuant to 2022 Iowa Acts, House File 2521, and their exclusion would better effectuate legislative intent. The definition of “direct services” was revised to account for this concern.

The Department also received a comment from LeadingAge Iowa (LAI). LAI recommended adding “reference checks” to the requirements set forth in paragraph 55.3(1)“a.” LAI also recommended adding a requirement that a health care employment agency provide copies of documents required to be retained by subrule 55.5(1) to a health care entity for a contracted agency worker upon request. Subrule 55.5(1) was revised to adopt LAI’s recommendation with respect to providing documents to the health care entity upon request.

The Department also received a comment from Nextaff regarding the public nature of health care employment agency reporting data. Nextaff commented that House File 2521 does not expressly require public dissemination of the data reported to the Department by health care employment agencies pursuant to subrule 55.5(3), and thus the inferred legislative intent was for such data to remain confidential. Nextaff also argued that such information is proprietary and confidential, such information is not in the public interest to be disclosed, and such public disclosure is not in line with the principles of free

market competition. Nextaff commented that it was otherwise supportive of the rule making. No change to the rule making was made in regard to public and confidential data.

Adoption of Rule Making

This rule making was adopted by the Department on November 9, 2022.

Fiscal Impact

In accordance with Iowa Code section 17A.4(4) and after analysis and review of this rule making, the Department does not anticipate expenditures requiring a fiscal impact statement. Registration fees and additional costs to the Department to implement this rule making are not anticipated to exceed the amounts set forth in Iowa Code section 17A.4(4).

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 4, 2023.

The following rule-making action is adopted:

Adopt the following new 481—Chapter 55:

CHAPTER 55 HEALTH CARE EMPLOYMENT AGENCIES

481—55.1(89GA, HF2521) Definitions. The definitions set forth in Iowa Code section 135Q.1 as enacted by 2022 Iowa Acts, House File 2521, are incorporated herein by reference. As used in this chapter, unless the context otherwise requires, the following terms apply:

“*Direct services*” includes services performed by registered nurses, licensed practical nurses, certified nurse aides, certified medication aides, and medication managers. “Direct services” does not include the practice of medicine and surgery or osteopathic medicine and surgery by an individual licensed under Iowa Code chapter 148 or 148C or the practice of nursing by an advanced registered nurse practitioner or an advanced practice registered nurse licensed under Iowa Code chapter 152 or 152E. For purposes of this chapter, janitorial, housekeeping, laundry, and meal preparation services are not considered direct services.

“*Health care employment agency*” does not include a recruitment firm that contracts with a health care entity to identify and screen potential candidates for hire and does not provide agency workers for temporary, temporary-to-hire, direct hire, or other contract or employee placements in this state. “Health care employment agency” does not include a group of physical therapists licensed under Iowa Code

chapter 148A, occupational therapists licensed under Iowa Code chapter 148B, or speech pathologists or audiologists licensed under Iowa Code chapter 154F providing services to a health care entity.

“*Health care entity*” includes, but is not limited to, any entities licensed or certified pursuant to Iowa Code chapters 135B (hospitals), 135C (health care facilities), 135G (subacute mental health care facilities), 135H (psychiatric medical institutions for children), 135J (licensed hospice programs), 231C (assisted living programs), and 231D (adult day services) or any ambulatory surgical center, home health agency, hospice, end-stage renal disease center, rural health clinic, or federally qualified health care center certified by the Centers for Medicare and Medicaid Services.

481—55.2(89GA, HF2521) Health care employment agency registration.

55.2(1) A health care employment agency operating in the state shall file a statement of registration and pay a registration fee in accordance with Iowa Code section 135Q.2(1) as enacted by 2022 Iowa Acts, House File 2521. A health care employment agency with multiple locations may complete one registration containing the information required in subrule 55.2(3) for each location and may remit one payment for the total registration fee required.

a. A health care employment agency in operation prior to July 1, 2022, shall register with the department no later than January 4, 2023.

b. A health care employment agency in operation on or after July 1, 2022, shall register with the department 30 days prior to operation.

55.2(2) The statement of registration may be submitted electronically via an Internet-based system provided by the department for such purpose; by mail to the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by fax to (515)242-5022.

55.2(3) The registrant shall include, at a minimum, the following information on the statement of registration:

- a.* Name(s) of the owner(s) and managing entity(ies);
- b.* Location of the health care employment agency, including street address, city, and ZIP code; and
- c.* Contact information for the owner(s) and managing entity(ies), including telephone number, mailing address, and email address.

55.2(4) The health care employment agency shall notify the department of any changes to the information on the annual statement of registration within 30 days of the date the change occurs, including cessation of operation. Changes shall be submitted in the manner described in subrule 55.2(2).

55.2(5) The department shall issue each location a separate certification of registration upon approval of registration and payment of the fee.

481—55.3(89GA, HF2521) General requirements. A health care employment agency shall adhere to all requirements under Iowa Code section 135Q.2(2) as enacted by 2022 Iowa Acts, House File 2521, and do all of the following:

55.3(1) Verification of employment standards. A health care employment agency shall ensure that its agency workers comply with all applicable state and federal requirements under Iowa Code sections 135Q.2(2) “*a*” through “*c*” as enacted by 2022 Iowa Acts, House File 2521, including but not limited to the following:

a. The health care employment agency shall ensure completion of all requirements regarding criminal, dependent adult abuse, and child abuse record checks that would otherwise be the responsibility of the health care entity if the health care entity employed the agency worker directly;

b. The health care employment agency shall ensure completion of the physical examination and screening and testing for tuberculosis procedures that would otherwise be the responsibility of the health care entity if the health care entity employed the agency worker directly; and

c. The health care employment agency shall ensure that an agency worker has completed all education, training, and continuing education requirements for the agency worker’s occupation and

that the agency worker is in good standing with any minimum licensing or certification standards to appropriately engage in the workers' profession.

55.3(2) *Allegations of dependent adult abuse.*

a. If a health care employment agency receives an allegation of dependent adult abuse against an agency worker, the health care employment agency shall immediately notify the facility in which the alleged abuse occurred so that the facility may immediately separate the victim and alleged dependent adult abuser. The health care employment agency shall also notify the department within 24 hours or the next business day. If the health care employment agency has reason to believe that immediate protection for the dependent adult is advisable, the health care employment agency should also make an oral report to an appropriate law enforcement agency. After receiving notice of an allegation of dependent adult abuse against an agency worker and before the department's dependent adult abuse investigation is completed and the abuse determination is made, the health care employment agency shall disclose such investigation to any prospective health care entity with which the agency worker will be placed.

b. In addition to any other requirement under state or federal law with respect to the receipt of an allegation of dependent adult abuse, if a health care entity receives an allegation of dependent adult abuse against an agency worker, the health care employment agency shall immediately notify the health care employment agency of the allegation. This does not except the health care entity from any of its duties with respect to alleged dependent adult abuse under state or federal law.

c. If the health care employment agency terminates the alleged dependent adult abuser as a result of the investigation or the alleged dependent adult abuser resigns, the alleged dependent adult abuser shall disclose such termination or investigation to any prospective facility or program employer.

481—55.4(89GA, HF2521) Prohibitions.

55.4(1) A health care employment agency shall not restrict the employment opportunities of an agency worker in accordance with Iowa Code section 135Q.2(3) as enacted by 2022 Iowa Acts, House File 2521.

55.4(2) Subrule 55.4(1) shall not apply to a contract between a health care employment agency and a health care entity or a health care employment agency worker that meets all of the following criteria:

a. The contract is for the purpose of placing an agency worker the health care employment agency assisted in obtaining authorization to work in the United States;

b. The contract contains an initial contract term of no less than 24 months and has a total duration, including any renewals or extensions, of no longer than 36 months; and

c. The contract requires the agency worker to work at a single health care entity for the duration of the contract.

481—55.5(89GA, HF2521) Record retention and reporting.

55.5(1) *Document retention.* A health care employment agency shall maintain documentation in its files regarding each agency worker's compliance with the minimum licensing, certification, training, health requirements, and continuing education standards as described in subrule 55.3(1). A health care employment agency shall provide copies of this documentation to a health care entity for a contracted agency worker upon request.

55.5(2) *External reporting.* A health care employment agency shall report, file, or otherwise provide any required documentation pursuant to Iowa Code section 135Q.2(2) "c" as enacted by 2022 Iowa Acts, House File 2521, including, but not limited to:

a. For any agency workers who are certified nurse aides, the health care employment agency shall report to the direct care worker registry completed work assignments of the agency worker sufficient to maintain an active status on the registry pursuant to requirements set forth in 441—subparagraph 81.16(5) "c"(2), 441—paragraph 81.16(5) "e," and 42 CFR 483.35(d)(6) and 483.156(c)(2).

b. The health care employment agency shall report allegations of dependent adult abuse as set forth in subrule 55.3(3).

55.5(3) *Quarterly reporting to the department.*

a. The quarterly report required by Iowa Code section 135Q.2(4) as enacted by 2022 Iowa Acts, House File 2521, shall provide the following:

(1) A detailed list of each health care entity participating in Medicare or Medicaid with whom the agency has contracted over the prior quarter;

(2) A detailed list of the average amount charged by the health care employment agency to the health care entity participating in Medicare or Medicaid over the prior quarter, broken down by provider type (e.g., hospital, nursing facility) and each individual agency worker category (e.g., certified nurse aide, registered nurse, licensed practical nurse) within that provider type; and

(3) A detailed list of the average amount paid by the health care employment agency participating in Medicare or Medicaid to agency workers over the prior quarter, broken down by provider type (e.g., hospital, nursing facility) and each individual agency worker category (e.g., certified nurse aide, registered nurse, licensed practical nurse) within that provider type.

b. The report data and submission dates shall be as follows:

(1) The quarterly report containing data from January 1 through March 31 shall be submitted no later than April 15;

(2) The quarterly report containing data from April 1 through June 30 shall be submitted no later than July 15;

(3) The quarterly report containing data from July 1 through September 30 shall be submitted no later than October 15; and

(4) The quarterly report containing data from October 1 through December 31 shall be submitted no later than January 15.

481—55.6(89GA, HF2521) Complaints.

55.6(1) Complaints.

a. The process for filing a complaint is as follows:

(1) Any person with a concern regarding the operation of a health care employment agency may file a complaint at the department's physical location, complaint hotline, or website, as follows:

Physical address:	Department of Inspections and Appeals Complaint/Incident Unit Lucas State Office Building, Third Floor 321 E. 12th Street Des Moines, Iowa 50319-0083
Complaint hotline:	1-877-686-0027
Website address:	dia.iowa.gov

(2) When the nature of the complaint is outside the department's authority, the department shall forward the complaint to the appropriate investigatory entity.

(3) If other state agencies receive a complaint that relates to a health care employment agency, the agencies shall forward the complaint to the department.

b. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the health care employment agency or is without a reasonable basis. If the department, upon preliminary investigation, determines that the complaint is intended to harass or is without a reasonable basis, the department may dismiss the complaint.

55.6(2) Content of complaint reports. The complaint shall include as much of the following information as possible: the complainant's name, address, and telephone number; the complainant's relationship to the health care employment agency; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department.

55.6(3) Time frames for investigation of complaints. Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary investigation of the complaint to determine if

probable cause exists to further investigate the complaint. If probable cause exists, an investigation of the health care employment agency shall be initiated within 45 working days.

55.6(4) *Standard for determining whether a complaint is substantiated.* The department shall apply a preponderance of the evidence standard in determining whether a complaint is substantiated.

55.6(5) *Notification of the health care employment agency or alleged health care employment agency of results of investigation.* The department shall notify the health care employment agency or alleged health care employment agency, in writing, of the final report of the complaint investigation.

55.6(6) *Notification of the complainant of results of investigation.* The complainant, if known, shall be notified of the final findings of a complaint investigation. The complainant, if known, shall also be notified if the department determines not to further investigate after the preliminary investigation and shall receive an explanation of the department's decision.

481—55.7(89GA, HF2521) Investigations.

55.7(1) *Initiation of investigations.* Investigations may be initiated because of a complaint or other information received by the department or upon referral from other agencies. If the department determines there is probable cause to believe that a health care employment agency is an unregistered health care employment agency or that a registered health care employment agency is not in compliance with state, federal, or local statutes or rules, an investigation shall be initiated.

55.7(2) *Evaluation of allegations and referral to other agencies.* If an investigation is initiated, the department shall evaluate the allegations to determine whether the allegations should also be referred to other local, state, or federal agencies. If the department believes a criminal violation has occurred or is occurring, it shall notify the appropriate law enforcement entities.

55.7(3) *Access to records.* An inspector of the department may enter a health care employment agency without a warrant and may examine and copy all records and items pertaining to the investigation unless the record or item is protected by some other legal privilege.

481—55.8(89GA, HF2521) Penalties. A health care employment agency that violates Iowa Code sections 135Q.2(1) through 135Q.2(3) as enacted by 2022 Iowa Acts, House File 2521, or rule 481—55.3(89GA, HF2521) shall be subject to the associated penalties under Iowa Code section 135Q.2(5) as enacted by 2022 Iowa Acts, House File 2521.

481—55.9(89GA, HF2521) Public and confidential information.

55.9(1) *Public disclosure.* The following records are open and available for inspection:

- a. Registration forms and accompanying materials;
- b. Final findings of the department's investigations;
- c. Official notices of penalties; and
- d. Any records required to be submitted to the department by the health care employment agency pursuant to Iowa Code section 135Q.2(4) as enacted by 2022 Iowa Acts, House File 2521, and subrule 55.5(3) (quarterly reporting to the department).

55.9(2) *Confidential information.* Confidential information includes the following:

a. Information obtained by the department that does not comprise a final finding resulting from a complaint investigation. Investigation information which does not comprise a final finding may be made public in a contested case proceeding concerning the department's final findings, including the imposition of a monetary penalty or the denial or revocation of registration.

- b. Names and identifying information of all complainants.

55.9(3) *Redaction of confidential information.* If a record normally open for inspection contains confidential information, the confidential information shall be redacted prior to an agency's providing the record for inspection.

These rules are intended to implement 2022 Iowa Acts, House File 2521.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/30/22.